

in effect under section 206(c) of this title)" after "whichever is the higher".

§ 216. Penalties

[See main edition for text of (a) to (d)]

(e) Civil penalties for child labor violations

Any person who violates the provisions of section 212 of this title, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed \$10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

[See main edition for text of (1) and (2)]

(3) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, and regulations to be promulgated by the Secretary. Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

(As amended Nov. 17, 1989, Pub. L. 101-157, § 9, 103 Stat. 945; Nov. 5, 1990, Pub. L. 101-508, title III, § 3103, 104 Stat. 1388-29.)

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-508 struck out "or any person who repeatedly or willfully violates section 206 or 207 of this title" after "issued under that section," in first sentence, substituted "not to exceed \$10,000 for each employee who was the subject of such a violation" for "not to exceed \$1,000 for each such violation" in first sentence, inserted after first sentence "Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed \$1,000 for each such violation.", substituted "any penalty under this subsection" for "such penalty" wherever appearing except after "appropriateness of", substituted "Except for civil penalties collected for violations of section 212 of this

title, sums" for "Sums" in last sentence, and inserted at end "Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury."

1989—Subsec. (e). Pub. L. 101-157 inserted "or any person who repeatedly or willfully violates section 206 or 207 of this title" in introductory provisions and inserted "or a repeated or willful violation of section 215(a)(2) of this title" in par. (3).

CHAPTER 9—PORTAL-TO-PORTAL PAY

§ 255. Statute of limitations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 217, 256, 257, 262 of this title.

CHAPTER 14—AGE DISCRIMINATION IN EMPLOYMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 3012, 3056a, 6103.

§ 621. Congressional statement of findings and purpose

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-433, § 1, Oct. 16, 1990, 104 Stat. 978, provided that: "This Act [amending sections 623, 626, and 630 of this title and enacting provisions set out as notes under this section and sections 623 and 626 of this title] may be cited as the 'Older Workers Benefit Protection Act'."

SEVERABILITY

Pub. L. 101-433, title III, § 301, Oct. 16, 1990, 104 Stat. 984, provided that: "If any provision of this Act [see Short Title of 1990 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby."

CONGRESSIONAL FINDING

Pub. L. 101-433, title I, § 101, Oct. 16, 1990, 104 Stat. 978, provided that: "The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations."

§ 623. Prohibition of age discrimination

[See main edition for text of (a) to (e)]

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

[See main edition for text of (1)]

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan—

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

[See main edition for text of (3)]

(g) Repealed. Pub. L. 101-239, title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233

[See main edition for text of (h)]

(i) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation

on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 and subparagraphs (C) and (D)¹ of section 411(b)(2) of title

¹ See References in Text note below.

26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of title 26.

(9) For purposes of this subsection—

(A) The terms "employee pension benefit plan", "defined benefit plan", "defined contribution plan", and "normal retirement age" have the meanings provided such terms in section 1002 of this title.

(B) The term "compensation" has the meaning provided by section 414(s) of title 26.

(j) **Employment as firefighter or law enforcement officer**

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(k) **Seniority system or employee benefit plan; compliance**

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

(l) **Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits**

Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section—

(1) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because—

(A) an employee pension benefit plan (as defined in section 1002(2) of this title) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(B) a defined benefit plan (as defined in section 1002(35) of this title) provides for—

(i) payments that constitute the subsidized portion of an early retirement benefit; or

(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age—

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of title 26) that—

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term "retiree health benefits" means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(As amended Pub. L. 101-239, title VI, § 6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 101-433, title I, § 103, Oct. 16, 1990, 104 Stat. 978; Pub. L. 101-521, Nov. 5, 1990, 104 Stat. 2287.)

REFERENCES IN TEXT

Subparagraphs (C) and (D) of section 411(b)(2) of title 26, referred to in subsec. (i)(7), were redesignated subpars. (B) and (C) of section 411(b)(2) of Title 26, Internal Revenue Code, by Pub. L. 101-239, title VII, § 7871(a)(1), Dec. 19, 1989, 103 Stat. 2435.

The Social Security Act, referred to in subsec. (b)(1)(B)(ii), (2)(D)(i), (ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVIII of the Act are classified generally to subchapters II (§ 401 et seq.) and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1990—Subsec. (f)(2). Pub. L. 101-433, § 103(1), added par. (2) and struck out former par. (2) which read as follows: "to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall

excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or".

Subsecs. (i), (j). Pub. L. 101-433, § 103(2), redesignated subsec. (i), relating to employment as firefighter or law enforcement officer, as (j).

Subsec. (k). Pub. L. 101-433, § 103(3), added subsec. (k).

Subsec. (l). Pub. L. 101-521 added cl. (iii) in par. (2)(A), and in par. (2)(D) inserted "and solely in order to make the deduction authorized under this paragraph" after "For purposes of this paragraph" and added cl. (iii).

Pub. L. 101-433, § 103(3), added subsec. (l).

1989—Subsec. (g). Pub. L. 101-239 struck out subsec. (g) which read as follows:

"(1) For purposes of this section, any employer must provide that any employee aged 65 or older, and any employee's spouse aged 65 or older, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

"(2) For purposes of paragraph (1), the term 'group health plan' has the meaning given to such term in section 162(i)(2) of title 26."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 105 of title I of Pub. L. 101-433, as amended by Pub. L. 102-236, § 9, Dec. 12, 1991, 105 Stat. 1816, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title shall apply only to—

"(1) any employee benefit established or modified on or after the date of enactment of this Act [Oct. 16, 1990]; and

"(2) other conduct occurring more than 180 days after the date of enactment of this Act.

"(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

"(1) that is in effect as of the date of enactment of this Act [Oct. 16, 1990]; or that is a result of pattern collective bargaining in an industry where the agreement setting the pattern was ratified after September 20, 1990, but prior to the date of enactment, and the final agreement in the industry adhering to the pattern was ratified after the date of enactment, but not later than November 20, 1990;

"(2) that terminates after such date of enactment;

"(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))); and

"(4) that contains any provision that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title, but for the operation of this section, this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

"(c) STATES AND POLITICAL SUBDIVISIONS.—

"(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

"(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

"(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act [Oct. 16, 1990] that would be superseded (in whole or part) by this title

[amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

“(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

“(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

“(i) following reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] (as amended by this title); and

“(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

“(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act [Oct. 16, 1990]; and

“(II) the employee is given up to 180 days after the offer in which to make the election.

“(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

“(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

“(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

“(4) DEFINITIONS.—For purposes of this subsection:

“(A) EMPLOYER AND STATE.—The terms ‘employer’ and ‘State’ shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

“(B) DISABILITY BENEFITS.—The term ‘disability benefits’ means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

“(C) REASONABLE NOTICE.—The term ‘reasonable notice’ means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

“(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

“(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

“(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this

title], or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(j)] (as redesignated by section 103(2) of this Act).

“(e) CONTINUED BENEFIT PAYMENTS.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual’s representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act [Oct. 16, 1990] if the intent of the modification is to evade the purposes of this Act.”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101-239, set out as a note under section 162 of Title 26, Internal Revenue Code.

REGULATIONS

Section 104 of title I of Pub. L. 101-433 provided that: “Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

§ 626. Recordkeeping, investigation, and enforcement

[See main edition for text of (a) to (d)]

(e) Reliance on administrative rulings; notice of dismissal or termination; civil action after receipt of notice

Section 259 of this title shall apply to actions under this chapter. If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title against the respondent named in the charge within 90 days after the date of the receipt of such notice.

(f) Waiver

(1) An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

(B) the waiver specifically refers to rights or claims arising under this chapter;

(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title may not be considered knowing and voluntary unless at a minimum—

(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an em-

ployee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(As amended Pub. L. 101-433, title II, § 201, Oct. 16, 1990, 104 Stat. 983; Pub. L. 102-166, title I, § 115, Nov. 21, 1991, 105 Stat. 1079.)

AMENDMENTS

1991—Subsec. (e). Pub. L. 102-166 struck out par. (1) designation, substituted "Section" for "Sections 255 and", inserted at end "If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title against the respondent named in the charge within 90 days after the date of the receipt of such notice.", and struck out par. (2) which read as follows: "For the period during which the Equal Employment Opportunity Commission is attempting to effect voluntary compliance with requirements of this chapter through informal methods of conciliation, conference, and persuasion pursuant to subsection (b) of this section, the statute of limitations as provided in section 255 of this title shall be tolled, but in no event for a period in excess of one year."

1990—Subsec. (f). Pub. L. 101-433 added subsec. (f).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(a) of Pub. L. 101-433 provided that: "The amendment made by section 201 [amending this section] shall not apply with respect to waivers that occur before the date of enactment of this Act [Oct. 16, 1990]."

RULE ON WAIVERS

Section 202(b) of Pub. L. 101-433 provided that: "Effective on the date of enactment of this Act [Oct. 16, 1990], the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect."

AGE DISCRIMINATION CLAIMS ASSISTANCE

Pub. L. 100-283, Apr. 7, 1988, 102 Stat. 78, as amended by Pub. L. 101-504, § 2, Nov. 3, 1990, 104 Stat. 1298, provided that:

[See main edition for text of Secs. 1 and 2]

"SEC. 3. EXTENSION OF STATUTE OF LIMITATIONS.

"(a) EXTENSION.—Notwithstanding section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)), a civil action may be brought under section 7 of such Act by the Commission or an aggrieved person, during the applicable extension period if—

"(1)(A) with respect to the alleged unlawful practice on which the claim in such civil action is based, a charge was timely filed under such Act with the Commission after December 31, 1983,

"(B) with respect to the alleged unlawful practice on which the claim in such civil action is based, a charge was timely filed under such Act with the Commission after April 6, 1985,

[See main edition for text of (2)]

"(3)(A) with respect to a claim described in paragraph (1)(A) the statute of limitations applicable

under such section 7(e) ran before the date of the enactment of this Act [Apr. 7, 1988], or

“(B) with respect to a claim described in paragraph (1)(B) the statute of limitations applicable under such section 7(e) runs after April 6, 1988, but before the expiration of the 180-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990].

[See main edition for text of (4)]

“(b) **DEFINITION.**—The term ‘extension period’ means—

“(1) with respect to a charge described in paragraph (1)(A), the 450-day period beginning on the date of the enactment of this Act [Apr. 7, 1988], and

“(2) with respect to a charge described in paragraph (1)(B), the 450-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], and [sic]

“SEC. 4. NOTICE OF STATUTE OF LIMITATIONS.

“(a) **NOTICE REGARDING CLAIMS FOR WHICH STATUTE OF LIMITATIONS IS EXTENDED.**—(1) Not later than 60 days after the date of enactment of this Act [Apr. 7, 1988], the Commission shall provide the notice specified in subsection (b) to each person who has filed before April 7, 1985, a charge to which section 3 applies.

“(2) Not later than 60 days after the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], the Commission shall provide the notice specified in subsection (b) to each person who filed after April 6, 1985, a charge to which section 3 applies and with respect to which the statute of limitation ran before the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990.

“(3) Not later than 60 days after the expiration of the 180-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990, the Commission shall provide the notice specified in subsection (b) to each person who filed after April 6, 1985, a charge to which section 3 applies and with respect to which the statute of limitations runs in such 180-day period.

“(b) **CONTENTS OF NOTICE.**—The notice required to be provided under subsection (a) to a person shall be in writing and shall include the following information:

[See main edition for text of (1)]

“(2) The date on which the statute of limitations applicable to such person’s claim will run.

[See main edition for text of (3)]

“SEC. 5. REPORTS.

“(a) **CONTENTS OF REPORTS.**—For each 180-day period in the 540-day period beginning on the date of enactment of this Act [Apr. 7, 1988], and each 150-day period in the 450-day period beginning on the date of the enactment of the Age Discrimination Claims Assistance Amendments of 1990 [Nov. 3, 1990], the Commission shall submit a written report that includes all of the following information:

[See main edition for text of (1) to (5); (b)]

[Pub. L. 101-504, § 1, Nov. 3, 1990, 104 Stat. 1298, provided that: “This Act [amending Pub. L. 100-283, set out above] may be cited as the ‘Age Discrimination Claims Assistance Amendments of 1990.’”]

§ 630. Definitions

For the purposes of this chapter—

[See main edition for text of (a) to (k)]

(l) The term “compensation, terms, conditions, or privileges of employment” encom-

passes all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.

(As amended Pub. L. 101-433, title I, § 102, Oct. 16, 1990, 104 Stat. 978.)

AMENDMENTS

1990—Subsec. (l). Pub. L. 101-433 added subsec. (l).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-433 applicable only to any employee benefit established or modified on or after Oct. 16, 1990, and other conduct occurring more than 180 days after Oct. 16, 1990, except as otherwise provided, see section 105 of Pub. L. 101-433, set out as a note under section 623 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

§ 631. Age limits

(a) **Individuals at least 40 years of age**

The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 101-239, title VI, § 6202(b)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2233.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239 struck out “(except the provisions of section 623(g) of this title)” after “in this chapter”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101-239, set out as a note under section 162 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 623, 624, 633a of this title; title 5 sections 2302, 7702; title 22 sections 3905, 4131.

§ 633a. Nondiscrimination on account of age in Federal Government employment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 626, 631 of this title; title 2 sections 1202, 1207; title 5 sections 2302, 7702, 7703; title 22 sections 3905, 4131.

CHAPTER 15—OCCUPATIONAL SAFETY AND HEALTH

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1553 of this title; title 15 sections 2080, 2603; title 25 section 450m; title 30 section 951; title 31 section 1105; title 42 sections 300ee-2, 6971, 7412, 11021, 11022.